

ROBERT JOHN STOCKTON, JR.,)	No. C 13-3978 RMW (PR)
)	
Petitioner,)	ORDER DISMISSING PETITION
)	FOR WRIT OF HABEAS CORPUS
vs.)	AS MOOT; DENYING
)	CERTIFICATE OF
GREG D. LEWIS, Warden,)	APPEALABILITY
)	
Respondent.)	
)	

BACKGROUND

According to the petition, petitioner was convicted of murder, and sentenced on October 16, 1995 in Tehama County Superior Court. Petitioner was sentenced to a term of 29 years to life in state prison. On December 3, 2009, petitioner was housed at Pelican Bay State Prison, where he was validated as an associate of the Aryan Brotherhood prison gang. As a result, he was placed in the Security Housing Unit (“SHU”) for an indeterminate term. Petitioner

1 challenged his gang validation and placement in the SHU via administrative appeals and the state
 2 courts, and was denied. Petitioner also challenged that SHU placement in this court, and was
 3 denied. See Stockton v. Lewis, No. 11-5562 RMW (N.D. Cal. denied Feb. 10, 2015) (“Stockton
 4 I”).¹

5 Petitioner now challenges the November 30, 2011 periodic review of his indeterminate
 6 SHU placement. Petitioner filed the underlying federal habeas petition on August 27, 2013. In
 7 his petition, petitioner alleges that, on November 30, 2011, he appeared before the Institutional
 8 Classification Committee (“ICC”) for a periodic review of his SHU placement after being
 9 validated as a gang member in 2009. As grounds for federal habeas relief, petitioner claims that:
 10 (1) he did not receive due process at the ICC hearing, and (2) his detention in the SHU, and
 11 specifically, his being labeled as “active” in gang activity was not supported by “some
 12 evidence.”

13 Respondent has filed an answer responding to the merits of petitioner’s petition.
 14 Petitioner filed a traverse, and acknowledged that, on April 20, 2015, petitioner was released
 15 from the SHU. Petitioner has requested an evidentiary hearing. Respondent has opposed the
 16 request, and in his opposition, argues that petitioner’s petition is now moot.

17 DISCUSSION

18 Article III, § 2, of the Constitution requires the existence of a case or controversy through
 19 all stages of federal judicial proceedings. This means that, throughout the litigation, the
 20 petitioner “must have suffered, or be threatened with, an actual injury traceable to the
 21 [respondent] and likely to be redressed by a favorable judicial decision.” Lewis v. Continental
 22 Bank Corp., 494 U.S. 472, 477 (1990). A case becomes moot “when the parties lack a legally
 23 cognizable interest in the outcome.” Johnson v. Rancho Santiago Cmty. Coll. Dist., 623 F.3d
 24 1011, 1020 (9th Cir. 2010) (quotation marks omitted). “[A] dispute solely about the meaning of
 25 a law, abstracted from any concrete actual or threatened harm, falls outside the scope of the
 26 constitutional words ‘Cases’ and ‘Controversies.’” Alvarez v. Smith, 558 U.S. 87, 93 (2009).

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 28 ¹ The Ninth Circuit denied a certificate of appealability on November 2, 2015.

1 An incarcerated convict's (or a parolee's) challenge to the validity of his conviction
 2 satisfies the case-or-controversy requirement, because the incarceration (or the restrictions
 3 imposed by the terms of the parole) constitutes a concrete injury, caused by the conviction and
 4 redressable by the invalidation of the conviction. See Spencer v. Kemna, 523 U.S. 1, 7 (1998).
 5 Once the convict's sentence has expired, however, some concrete and continuing injury other
 6 than the now-ended incarceration or parole-some "collateral consequence" of the
 7 conviction-must exist if the suit is to be maintained and not considered moot. Id.

8 When petitioner first filed this petition, habeas jurisdiction was present because petitioner
 9 was seeking release from the SHU to the general prison population. See Nettles v. Grounds, 788
 10 F.3d 992, 1004-06 (9th Cir. 2015). Petitioner was also seeking the "restoration" of "withheld"
 11 good-time credits because petitioner was unable to accrue good time credits while in the SHU.²
 12 However, petitioner has not yet reached his minimum eligible parole date ("MEPD"), which is
 13 March 5, 2019. (Resp. Ans., Ex. 9.) Petitioner's inability to earn good time credits while in the
 14 SHU does not alter a previously earned release date, and success on this claim would not
 15 "necessarily spell speedier release." Nettles, 788 F.3d at 1003. Moreover, even assuming that
 16 some amount of petitioner's good time credits were forfeited as a punishment, restoration of
 17 those credits would not necessarily accelerate petitioner's release from custody because the
 18 credit restoration on the duration of confinement is "too attenuated" to support habeas
 19 jurisdiction. See id. Thus, the fact that petitioner was unable to earn good time credits while in
 20 the SHU does not confer habeas jurisdiction on this petition.

21 As respondent notes, petitioner has already received the primary relief that the court
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23 ² The court takes judicial notice of its own order in Stockton I. The court reminds
 24 petitioner that, "petitioner's argument regarding the loss of good time credits misstates the law
 25 and ignores a critical difference between the treatment of good time credit in disciplinary
 26 hearings and in gang validations. In disciplinary hearings, earned good time credits are taken
 27 away, resulting in increased procedural due process protections because an otherwise earlier
 28 release date may be invalidated. Under California Penal Code § 2933.6(a), however, an inmate
 who has been validated in a gang does not lose earned credit, but rather becomes ineligible to
 earn additional credits while in segregated housing. Petitioner's inability to earn additional
 credits does not alter a previously earned release date." Stockton I, Docket No. 31 at 2.

1 could have provided: to be released from the SHU. See Fay v. Noia, 372 U.S. 391, 430 (1963)
2 (recognizing that a habeas court only has the power to release the body of the prisoner),
3 overruled on other grounds by Wainwright v. Sykes, 433 U.S. 72, 87 (1977). Petitioner was
4 released from the SHU on April 20, 2015, and approved for transfer to High Desert State Prison
5 in general population. (Traverse, Ex. 1.) There are no “collateral consequences” for petitioner
6 such that success on this habeas petition can remedy. See Munoz v. Rowland, 104 F.3d 1096,
7 1097-98 (9th Cir. 1997) (dismissing appeal as moot on due process challenge to gang validation
8 and SHU placement because the petitioner was released from the SHU, and there were no
9 collateral consequences). Thus, petitioner’s case is DISMISSED as moot.

10 CONCLUSION

11 Accordingly, the petitioner’s case is DISMISSED as moot. The clerk shall terminate all
12 pending motions and close the file.

13 Petitioner has failed to make a substantial showing that his claims amounted to a denial
14 of his constitutional rights, or demonstrate that a reasonable jurist would find the denial of his
15 claims debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, a
16 certificate of appealability is DENIED.

17 IT IS SO ORDERED.

18 DATED: 3/11/2016

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20 RONALD M. WHYTE
21 United States District Judge
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